Supreme Court U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-642

MAYHUE'S SUPER LIQUOR STORES, INC., a Florida corporation, and CARL L. MAYHUE, d/b/a MAYHUE'S SUPER LIQUOR STORES, INC.

Petitioners,

vs.

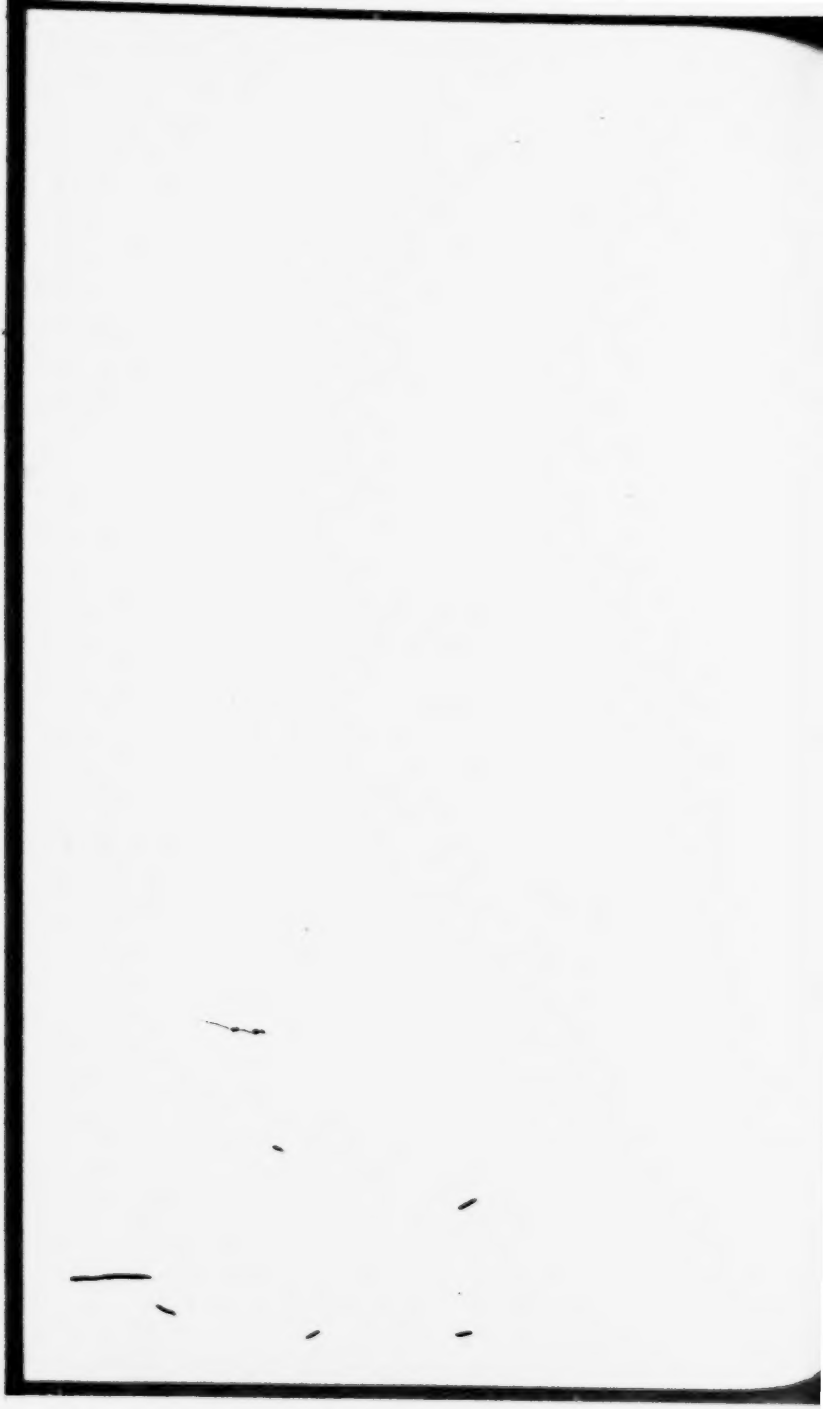
JAMES D. HODGSON, Secretary of Labor, United States Department of Labor,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

THE PETITIONERS, MAYHUE'S SUPER LIQUOR STORES, INC., a Florida corporation, and CARL L. MAYHUE, d/b/a MAYHUE'S SUPER LIQUOR STORES, INC., respectfully request that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on September 5, 1972.

OPINION BELOW

The opinion of the Court of Appeals not yet reported appears in the Appendix hereto, Page 1. The opinion was rendered on August 2, 1972.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on August 2, 1972, and the Petition for Re-Hearing was denied on September 5, 1972, and appears in the Appendix hereto, Page 8. This Court's jurisdiction is invoked under 28 USC, §1254(1). QUESTIONS PRESENTED:

1. Whether the District Court properly ruled in favor of the Petitioner in granting declaratory relief and holding that Plaintiffs' proposed agreement with employees in no way violates the provisions of the Fair Labor Standards Act.

2. Whether the Court of Appeals for the Fifth Circuit erred when it reversed the District Court and held that the proposed agreement with employees is invalid and violates the Fair Labor Standards Act and remanding to the District Court for further proceedings in connection with all matters in which the agreement for repayment of shortages was involved.

STATUTORY PROVISIONS AND REGULATIONS INVOLVED

1. Fair Labor Standards Act of 1938; Public Law #718; Chapter 676; Third Section Statute #2457.

2. 29 Code of Federal Regulations 778.

STATEMENT OF THE CASE

Petitioner is an individual doing business as MAYHUE'S SUPER LIQUOR STORES, INC., a Florida corporation and is a retail liquor dealer in Broward County, Florida, who had, at the time of the trial, in the Federal District Court in and for Miami, Florida, five retail liquor stores. During investigation of Petitioner by Agents of the Secretary, the Petitioner made a request of the Agents of the Secretary that the Petitioner be allowed to enter into an agreement with employees of the Petitioner whereby in the event of a cash register shortage the employees would voluntarily repay missing funds to the Petitioner within a reasonable period of time so long as the repayment was not deducted from the payroll. The Agents of the Secretary of Labor refused to allow the Petitioner to enter into such an agreement and informed the Petitioner that such an agreement would be in violation of the Fair Labor Standards Act of 1938 as Amended. Counsel for the Petitioner wrote, on October 17, 1969, to the Administrator of the Wage and Hour Division (A. 9) and requested a ruling on this Agreement, to-wit:

> "The employee agrees to voluntarily repay said missing funds to the employer within a reasonable period of time. The employer shall not deduct said shortages from the pay check of the employee. It is understood that said shortages are considered to be a valid debt owed to the employer."

The Administrator of the Wage and Hour Division answered in a letter dated October 23, 1969 (A. 9) and

stated that this agreement would be illegal and regardless of the fact the Attorneys for the Petitioner stated such repayments would not be involved in payroll deductions, the Administrator referred to such payment as "deductions."

Investigation by the Secretary led the Agents of the Secretary to believe that there were violations of the Fair Labor Standards Act being committed by the Petitioner, particularly in the record keeping provisions and failure to pay for all time worked. On December 9, 1969, the Petitioner filed a Petition for Declaratory Judgment under the Fair Labor Standards Act (A. 14) stating that the Secretary was incorrect in that the Fair Labor Standards Act (A. 22) stating that the Secretary was incorrect in that the Fair Labor Standards Act was inapplicable to the Petitioner's right to enter into the agreement with its employees with regard to repayment of cash shortages. The Petition also requested that the Secretary be restrained and enjoined from interfering with the right of the Petitioner to carry on its business and to have such an agreement with its employees. IT WAS NOT ALLEGED AND NOWHERE DOES IT APPEAR IN THE RECORD THAT THE PETITIONER MADE ANY DEDUCTIONS OR RECEIVED ANY REPAYMENTS OF SHORTAGES PURSUANT TO THE AGREEMENT PROPOSED TO THE SECRETARY IN THE LETTER OF OCTOBER 17, 1969 (A. 9).

Following the filing of the Petition, the Secretary filed an answer denying the right of the Petitioner to enter into such an agreement. The Secretary also filed a counterclaim for injunction against the Petitioner alleging

that the Petitioner had violated the provisions of §6 and 15A(2) of the Act by paying less than the minimum wage, by failing to pay overtime for work in excess of 40 hours, by failing to keep accurate records for wages and hours, and that Petitioner had repeatedly and willfully violated and was willfully violating the Act.

It was and is the contention of the Petitioner that the Declaratory Judgment action and the proposed agreement to be entered into between Petitioner and Petitioner's employees were and are separate and apart from any of the allegations and evidence contained in the counterclaim in behalf of the Secretary.

PROCEEDINGS BELOW

The Petitioner brought this action for declaratory relief under §28: 1331, U.S.C.A.; 28: 2201, U.S.C.A.; 28: 1343, U.S.C.A.; and 29: 201, U.S.C.A., and Rules 23A and 57 of the Federal Rules of Civil Procedure for the purpose of determining a question of actual controversy between the parties concerning the interpretation of Title 29 Part 778 of the Code of Federal Regulations under the Fair Labor Standards Act of 1938 as Amended. The case in chief on the Petition for Declaratory Judgment had virtually stipulated facts, and that was that the Petitioner proposed entering into the suggested contract. No evidence was put on during the case in chief of the Petitioner that any shortages had been repaid by either direct payment or indirect payment by the employee or by payroll deduction pursuant to the suggested agreement (A. 9). During the case on the counterclaim of the Secretary, certain allegations were made and evidence was brought forth that shortages had been repaid by employees but they had been

repaid pursuant to another agreement that was in no way similar to the suggested agreement in the Declaratory Judgment action. The other agreement, which is found on Page 341 of the Appendix (A. 14) provided as follows:

> "It is fully understood that I am responsible for shortages which occur in the cash register of which I am in charge, with the understanding that I am the sole operator of the particular cash register.
>
> "These are the terms and conditions of my employment, which are acceptable to me.
>
> "This will authorize you to deduct from any monies due me the amount of shortages which may occur."
>
> Signed_____
> (Signature)

Throughout the trial on the counterclaim the Petitioner maintained that it did not make payroll deductions for repayment of shortages under this agreement. The Secretary, through its witnesses, alleged that certain shortages were deducted pursuant to this agreement. The Lower Court ruled that the first proposed agreement as set forth in Counsel for Petitioner's letter of October 17, 1969 (A. 9) in no way violates the provisions of the Act.

IT IS UNCONTRADICTED IN THE RECORD, HOWEVER, THAT THE COUNTERCLAIMS OF THE SECRETARY CONTAINED NO TESTIMONY CONCERNING SHORTGAES OR DEDUCTIONS PURSUANT TO THE AGREEMENT PROPOSED IN THE ORIGINAL PETITION FOR DECLARATORY RELIEF. THE FIFTH CIRCUIT COURT OF APPEALS CONFUSED THIS ISSUE AND ASSUMED THAT EVIDENCE HAD BEEN HEARD CONCERNING THE FIRST PROPOSED AGREEMENT. IN FACT, THE FIFTH CIRCUIT COURT OF APPEALS WENT AS FAR AS REMANDING THE CASE TO THE DISTRICT COURT FOR FURTHER PROCEEDINGS IN CONNECTION WITH ALL MATTERS IN WHICH THE AGREEMENT FOR REPAYMENT OF SHORTAGES WAS INVOLVED. THERE IS NOTHING IN THE RECORD IN THE COURT BELOW SHOWING REPAYMENT FOR SHORTAGES UNDER THE AGREEMENT THAT THE PETITIONER SUGGESTED IN ITS PETITION FOR DECLARATORY JUDGMENT.

REASONS FOR GRANTING THE WRIT

The Fair Labor Standards Act of 1938 makes no reference to the suggested agreement that is the subject of the Petition for Declaratory Relief. Counsel for the Petitioner relied upon the constitutionally protected right to contract or liberty of contract as set forth in **Lochner vs. New York,** 198 U.S. 45; 49 L.Ed. 935, 25 Sup. Ct., 539 (1905) and **Coppage vs. Kansas,** 35 Sup.Ct., 240, 236 U.S. 1 (1915).

The Fifth Circuit Court of Appeals confused the counterclaims and the allegations concerning payroll de-

ductions with the suggested agreement in the Petition for Declaratory Relief. THE ONLY ISSUE IN THIS CASE IS WHETHER THE FAIR LABOR STANDARDS ACT PRECLUDES THE CONTRACT PROPOSED IN PETITIONER'S LETTER OF OCTOBER 17, 1969 (A. 9).

The Court erroneously relied upon **Shultz vs. Hinojosa**, 432 F.2d 259 (5th Circuit 1970) and **Brooklyn Bank vs. O'Neil**, 324 U.S. 697 (1945).

If the decision of the Fifth Circuit Court of Appeals is allowed to stand, there will be case law settling a crucial issue where the Court making the law has totally misinterpreted the evidence in the record in the trial court below. It is for these reasons that the Writ should be granted.

ARGUMENT

The Petitioner is not quarreling with the portion of the decision of the Fifth Circuit Court of Appeals which affirmed that portion of the Final Judgment of the Federal District Court that held that the Petitioner had willfully violated the Act. However, in the trial on the counterclaim the Petitioner steadfastly maintained that it had the right to enter into a "proposed" agreement with its employees. The Petitioner never stated nor did the Secretary ever state or even allege that the Petitioner had violated the Act with the use of the proposed agreement. In fact, the counterclaim for unpaid overtime and for repayment of shortages through payroll deductions was clearly separate and apart from the original request for approval of the Petitioner's proposed agreement.

The "liberty to contract" is considered both a freedom and a property right and is protected against arbitrary or unreasonable restraint.

> "The right to make legal contracts of all kinds without fraud or deception is not only a part of the Civil Liberty possessed by every individual who is sui juris but is both a liberty and a property right within the protection of the guarantees against the taking of liberty or property without due process of law." 16A CJS Constitutional Law, § 575.

Neither the State nor Federal Government may impose restraint upon this basic freedom and liberty. As far back as 1887 the Supreme Court of the United States warned of legislative or governmental limitations of this freedom. In **Mugler vs. Kansas**, 123 U.S. 623, 31 L.Ed. 205, 8 S.Ct., 283 (1887), Justice Harlan stated:

> "It does not follow that every statute enacted ostensibly for the promotion of these ends (police powers), is to be accepted as a legitimate exertion of the police powers of the state . . . If, therefore, a statute purporting to have been enacted to protect the public health, the public morals or the safety, has no real or substantial relations to those objects or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby to give effect to the Constitution."

The reasonableness of the legislation in these areas was tested in **Lochner vs. New York**, 198 U.S. 45; 49

L.Ed. 935; 25 Sup. Ct. 539 (1905). Here a New York statute prohibiting employment in a bakery for more than sixty (60) hours in one week or ten (10) hours in one day was upheld on the rationale that it protected the health and welfare of citizens and of labor people. In the majority opinion of the Court Mr. Justice Peckham stated:

> "The statute necessarily interferes with the right of contracts between the employer and the employees concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution . . . The right to purchase or sell labor is part of the liberty protected by this amendment unless there are circumstances which preclude the right . . ."

The Florida Supreme Court has held that the citizen's right to pursue lawful business is property and the right to contract for personal service as a means for the acquisition of property is one of the privileges of a citizen of the United States of which he cannot be deprived without invading his right to liberty. **State Ex rel Fulton vs. Ives**, 167 So. 394 (Fla. 1936).

The classic case of **Coppage vs. Kansas**, 35 Sup.Ct., 240, 236 U.S. 1 (1915) still stands for the immovable concept that the right to contract cannot be taken from an employer without due process of law and without reason. This landmark case held that a Kansas statute of 1903, which would punish an employer for prescribing as

a condition of employment that the employee shall agree not to become a member of a labor organization, was repugnant to the due process clause of the Fourteenth Amendment and was to be void. Certainly, the law today precludes such "yellow-dog" contracts, but the verbiage in the opinion of Justice Pitney and of the dissenting opinion of Justice Holmes puts great weight at the importance of applying reason and care when depriving one of the property right to enter into a contract:

> "The principle is fundamental and vital. Included in the right of personal liberty and the right of private property-partaking of the nature of each —is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money. An interference with this liberty so serious as that now under consideration, and so disturbing of equality of right, must be deemed to be arbitrary, unless it be supportable as a reasonable exercise of the police power of the state."

> "In order to satisfy the constitutional requirement of due process, a state or federal statute, or municipal ordinance creating and defining an of-

fense and fixing the punishment therefor must be a reasonable exercise of power possessed by the federal, state or municipal legislative body enacting it, and must not arbitrarily and unreasonably prescribe that certain acts inherently and generally innocent shall constitute criminal offenses or make a classification which is purely arbitrary or unreasonable."

There is a great void of case law dealing with this concept of repaying cash shortages voluntarily. Counsel for the Secretary throughout the trial and in anticipation of his brief cites cases allegedly on point which deal with actual payroll deduction fact situations. There is no similarity because, as Judge Fay stated, the reason for his granting a declaratory judgment is that this is not a payroll deduction, but that this is a voluntary repayment of a cash shortage and, although the Secretary and his agents refuse to recognize the logic of this fact pattern, it is ever present.

Our American history has seen a great change in labor-management relations beginning in the 1850's when trade unionism began its move to better employees' working conditions. Indeed the need for such reform was evident and the culmination of the reforms arrived in the 30's with the Social Security Act in 1933, the Wagner Act in 1937 and the Fair Labor Standards Act in 1938.

Throughout the history management reluctantly acquiesced to the fact that the government and the employees, through their unions, were infringing more and more upon the rights of management to manage.

A new philosophy and concept of democracy, which added a new dimension to labor-management relations, brought forth the phenomenon of government's interference with management's right to run its business. Consistent with this social change certain "ground rules" arose. It became mandatory for employers to closely follow the "ground rules" as interpreted by field investigators called "compliance officers", who freely interpret the law with the help of interpretative bulletins and without the help of a judge, a jury, or the Congress. Such an interpretation was requested by Counsel for the Petitioner in his letter to the Wage-and-Hour Division Administrator on October 17, 1969, (A. 9). The answer to the letter (A. 12) speaks for itself. Judge Fay did no more than what the Administrator should have done in October of 1969. Now the blinders have been removed from the Commissioner and, in accordance with Judge Fay's Declaratory Judgment in favor of the Petitioner, the Commissioner must heed the warnings of the tax paying entrepreneur.

Throughout the trial of this cause compliance officer Reid stated the Secretary's position to be that the Secretary was not objecting to the concept of taking back moneys from employees at all, but he was applying a mathematical formula and labeling this act a payroll deduction and stating that the monies may not be repaid by the employees in this fashion if it is one day, one week or one year after the shortage has been discovered.

Judge Fay's words in Paragraph 7 on Page 8 of the Findings of Fact and Conclusions of Law (A. 30) leave no question as to the justice of the position taken by the Petitioner. Anything less than this position invites these employees to steal money from the Petitioner.

The Fifth Circuit Court of Appeals in its opinion of August 2, 1972, seemed to hold that **Brooklyn Bank vs. O'Neil, 324, U.S. 697 (1945)** and **Shultz vs. Hinojosa, 432 F.2d 259 (5th Circuit 1970)**, are controlling and deal with the question at bar. This is error. In the **Brooklyn Bank** case, an employee named O'Neil had overtime pay due him from the Bank. The Bank tendered him a check which did not include liquidated damages and the Bank also had O'Neil sign a release and waiver in consideration of having received the check. This is the "waiver" that the Secretary argued and that the Fifth Circuit Court of Appeals held is analogous to the so-called "waiver" in the case at bar. O'Neil waived his right to liquidated damages without advice of Counsel. In the fact pattern set forth in the Petition for Declaratory Judgment and the letter of the Petitioner of October 17, 1969 (A. 9) the employee waives nothing but is simply agreeing to repay cash shortages to the Petitioner voluntarily within a reasonable time. The verbiage in the **Brooklyn Bank** case is also of interest. The Court says on Page 24:

> "The statute was a recognition of the fact that due to the unequal bargaining power as between employer and employee certain segments of the population required federal compulsory legislation to prevent private contracts on their part which endangered national health and efficiency and as a result the free movement of goods in interstate commerce. To accomplish this purpose standards of minimum wages and maximum hours were provided . . . "

Indeed there is unequal bargaining power but it goes the other way in the case at bar. The Labor Department

provides free legal services for the employees who allegedly complained about the Petitioner. Not only does the Labor Department oppose the Petition for Declaratory Relief but through its counterclaims and its parading of witnesses throughout the trial, the Government succeeds in confusing the Appellate Court into believing that the alleged shortage deductions are directly connected with the proposed agreement in the Petition for Declaratory Relief. There is indeed unequal bargaining power here and that is that the Secretary has, at its disposal, free legal talent that it provides for the employees.

The Court in the Fifth Circuit Court of Appeals holds that **Shultz vs. Hinojosa**, 432 F.2d 259 (5th Circuit 1970) is controlling. The case is far afield and very distinguishable from the case at bar. The **Hinojosa** case deals with the question of deducting from minimum wages the cost of furnishing butcher knives and honing steel and specified articles of clothing as a condition of employment. Interestingly enough **Hinojosa** deals with direct deductions from payroll for these items. The Petitioner's case in the Declaratory Judgment action does not deal with payroll deductions but specifically precludes using the payroll deduction method. In Judge Fay's Judgment (A. 30):

> "With regard to plaintiffs' petition for a declaratory judgment against the Secretary, the court declares and concludes, as a matter of law, that the plaintiffs' agreement with its employees entrusted with money as set forth in paragraph 9 of the Findings of Fact, in no way violates the provisions of the Act. To hold otherwise would

amount to a "judicial invitation" to such employees to steal. Certainly the Act is not intended to prevent an employer from protecting his property, including assets in the form of cash. Such losses, however, should not be deducted from the employees pay whether wages are being paid in cash or by check. The agreement being approved by the court contemplates "voluntary" repayment by employees. Any contrary action by the employer would, in the court's opinion, violate the provisions of the Act."

The Fifth Circuit Court of Appeals has usurped the fact finding right of the trial court. On Page 6 of the Decision of August 2, 1972, (A. 5) the Court states the following:

"The 'judicial invitation' to steal argument is not persuasive. There is no evidence that MAYHUE'S shortages were the result of theft on the part of the cashiers or were in any way different from the usual losses which are to be expected where cashier-employees handle a large number of transactions. The agreement required repayment regardless of the reason for the shortages. If the agreement required only repayment of money that the employee himself took or misappropriated it obviously would not collide with the Act. As a matter of law the employee would owe such amounts to the employer, and as a matter of fact, the repayment of monies taken in excess of the money paid to the employee in wages would not reduce the

amount of his wages. This case is distinguishable from the situation where an employee has taken some money, has had the use of it, and is required to return it. In such a case there would be no violation of the Act because the employee has taken more than the amount of his wage and the return could in no way reduce his wage below the minimum."

Why does the Court assume that shortages are a necessary part of cashier operations? What facts in the record show this to be the case? This is clearly an assumption on the part of the Appellate Court which it has no right to make. Why would it be correct if the agreement required only repayment of money that the employee himself took or misappropriated? Why is this more correct than the agreement set forth by the Petitioner in its letter of October 17, 1969 (A. 9)? There is no answer for these questions.

The court has gone beyond the powers of the Appellate Court. In **Lavender vs Kurn**, 327 U.S. 645 (1946), this Court held that:

> "Only when there is a complete absence of probative facts to support the conclusion reached does a reversible error appear. But where, as here, there is an evidentiary basis for the jury's verdict, the jury is free to discard or disbelieve whatever facts are inconsistent with its conclusion. In the Appellate Court's function as exhausted when that evidentiary basis becomes apparent, it being immaterial that the court might draw a contrary inference or feel that another conclusion is more reasonable."

In the case at bar, the lower court had a non-jury trial. Therefore, Judge Fay was the Trier of facts as well as law. In the opinion of Judge Fay the agreement of the Petitioner as proposed to the Secretary did not violate the Fair Labor Standards Act. The Fifth Circuit Court of Appeals has taken it upon themselves to assume facts not in evidence and that is that the shortage repayments would include monies that were taken out of the register by someone other than the employee involved. There is nothing at all in the record concerning this presumption.

Further the Court imposes its reasoning and fact-finding on the Trial Court on page 6 of the Decision of August 2, 1972 (A. 6), when it says the following:

> "The voluntary-involuntary dichotomy is meaningless for two reasons. First, if the intent of the parties were to make repayment purely voluntary on the part of the employee, an agreement would not be necessary. The agreement would be pointless. Yet the employer requires the execution of the agreement as a condition of employment. Second, the provision in the agreement that the shortages are considered to be a valid debt owed to the employer obviously controls the matter and expresses the intent of the party. It overrides any argument that the repayment is voluntary on the part of the employee."

This is an invasion of the facts and of the reasoning of the trial court. The Appellate Court is here saying that there can be no such thing as a voluntary agreement between an employer and an employee! Perhaps if the

facts in the record showed that the Petitioner was an employer applying the standards of employee relationships applied in the 1850's and in the sweatshops of those years, there could be reason for this application of arbitrary appellate fact finding. There is none in this record and the Court is compelled to reverse the Fifth Circuit Court of Appeals.

Finally, the Appellate Court argues on Page 7 of the Decision of August 2, 1972 (A. 6):

> "With the employees' financial picture burdened with the valid debt of the shortages, he is receiving less for his services than the wage that is paid to him. Whether he pays the valid debt out of his wages or other resources, his effective rate of pay is reduced by the amount of such debt. When it is reduced below the required minimum wage the law is violated."

There is no logic in this argument as there is no answer to the question why is the effective rate of pay reduced? It has been made quite clear since the initial letter to the Secretary of October 17, 1969, (A. 10) that the Petitioner has no intention of deducting the shortages from payroll checks. It was made clear in the record that there would be, under the proposed agreement, no repercussions to the employee if he refused to pay this "valid debt". And yet the Fifth Circuit Court of Appeals arbitrarily says that there can be no voluntary agreement, that this is a payroll deduction even though the amount is not deducted from the pay check, and that the actual monies received by the employee are below the Federal minimum wage and in violation of the Fair Labor Standards Act of 1938 as amended.

In Chicago Rock Island and Pacific Railway Company vs. Howell, the Tenth Circuit Court of Appeals in 1968, 401 Fed.Reporter 2nd 752, stated that it would not superimpose its secondhand judgment of the trial court unless it could say from its objective appraisal of all of the facts and circumstances that the judgment of the lower court is clearly wrong.

In this case the Fifth Circuit Court of Appeal has superimposed its secondhand judgment on Judge Fay's objective appraisal of the facts before him. It has clearly committed error.

The decision of the Court of Appeals in the instant case is not only clearly erroneous, but it has opened the door to further erroneous decisions because of the misunderstanding of the facts in the case at bar. As stated above, the Fifth Circuit Court of Appeals assumed that the allegations of the Secretary in the counterclaim concerning alleged payroll violations and overtime violations and alleged shortages deductions from paychecks were connected in some way with the proposed agreement for voluntary shortage repayment in the main case-in-chief on the Petition for Declaratory Judgment. In misunderstanding this and ordering that the case be remanded to the District Court for further proceedings in connection with all matters in which the agreement for repayment of shortages was involved, the Court will confuse future litigence on this question, if this question is put to rest based upon a misunderstanding of the facts before the Court then future litigence concerning questions under Fair Labor Standards Act of 1938 as amended will suffer from the confusion.

CONCLUSION

It is for these reasons that a Writ of Certiorari should be issued by the Supreme Court of the United States to review the judgment and opinion of the Fifth Circuit Court of Appeals.

Respectfully submitted,

JAMES V. JOHNSTONE, ESQUIRE
Counsel for the Petitioners
420 Lincoln Road; Suite 244
Miami Beach, Florida 33139

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true and correct copy of the foregoing PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT was mailed to each of the following: Alfred G. Albert, Acting Solicitor of Labor; Carin Ann Clauss and Beverley R. Worrell, Regional Solicitors, Attorneys for the Secretary, United States Department of Labor, Room 4141 Main Labor, 14th & Constitution Avenue, N. W., Washington, D. C. - 20210; and Robert Rust, Esquire, United States Attorney, 300 Ainsley Building, Miami, Florida - 33130- this 5th day of October, 1972.

By _____
JAMES V. JOHNSTONE